

§ 462.13

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for use in the NRS, the Secretary notifies the test publisher of the Secretary's decision and of the reasons why the test does not meet those criteria and requirements.

(2) Within 30 days after the Secretary notifies a test publisher that its test is not suitable for use in the NRS, the test publisher may request that the Secretary reconsider the Secretary's decision. This request must be accompanied by—

(i) An analysis of why the information and documentation submitted meet the criteria and requirements in § 462.13, notwithstanding the Secretary's earlier decision to the contrary; and

(ii) Any additional documentation and information that address the Secretary's reasons for determining that the test was unsuitable.

(3) The Secretary reviews the additional information submitted by the test publisher and makes a final determination regarding the suitability of the test for use in the NRS.

(i) If the Secretary's decision is unchanged and the test remains unsuitable for use in the NRS, the Secretary notifies the test publisher, and this action concludes the review process.

(ii) If the Secretary's decision changes and the test is determined to be suitable for use in the NRS, the Secretary follows the procedures in paragraph (c) of this section.

(e) *Revocation.* (1) The Secretary's determination regarding the suitability of a test may be revoked if the Secretary determines that—

(i) The information the publisher submitted as a basis for the Secretary's review of the test was inaccurate; or

(ii) A test has been substantially revised—for example, by changing its structure, number of items, content specifications, item types, or sub-tests.

(2) The Secretary notifies the test publisher of the—

(i) Secretary's decision to revoke the determination that the test is suitable for use in the NRS; and

(ii) Reasons for the Secretary's revocation.

(3) Within 30 days after the Secretary notifies a test publisher of the decision to revoke a determination that a test is suitable for use in the NRS, the test

publisher may request that the Secretary reconsider the decision. This request must be accompanied by documentation and information that address the Secretary's reasons for revoking the determination that the test is suitable for use in the NRS.

(4) The Secretary reviews the information submitted by the test publisher and makes a final determination regarding the suitability of the test for use in the NRS.

(5) If the Secretary revokes the determination regarding the suitability of a test, the Secretary publishes in the FEDERAL REGISTER and posts on the Internet at <http://www.nrsweb.org> a notice of that revocation along with the date by which States and local eligible providers must stop using the revoked test. A copy of the notice of revocation is also available from the U.S. Department of Education, Office of Vocational and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202–7240.

(Authority: 20 U.S.C. 9212)

§ 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?

In order for the Secretary to consider a test suitable for use in the NRS, the test or the test publisher, if applicable, must meet the following criteria and requirements:

(a) The test must measure the NRS educational functioning levels of members of the adult education population.

(b) The test must sample one or more of the major content domains of the NRS educational functioning levels of ABE, ESL, or ASE with sufficient numbers of questions to adequately represent the domain or domains.

(c)(1) The test must meet all applicable and feasible standards for test construction and validity provided in the 1999 edition of the *Standards for Educational and Psychological Testing*, prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association,

and the National Council on Measurement in Education incorporated by reference in this section. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Psychological Association, Inc., 750 First Street, NE., Washington, DC 20002. You may inspect a copy at the Department of Education, room 11159, 550 12th Street, SW., Washington, DC 20202 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) If requested by the Secretary, a test publisher must explain why it believes that certain standards in the 1999 edition of the *Standards for Educational and Psychological Testing* were not applicable or were not feasible to meet.

(d) The test must contain the publisher's guidelines for retesting, including time between test-taking, which are accompanied by appropriate justification.

(e) The test must—

(1) Have two or more secure, parallel, equated forms of the same test—either traditional paper and pencil or computer administered instruments—for which forms are constructed prior to administration to examinees; or

(2) Be an adaptive test that uses computerized algorithms for selecting and administering items in real time; however, for such an instrument, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing. Scores associated with these alternate administrations must be equivalent in meaning.

(f) For a test that has been modified for individuals with disabilities, the test publisher must—

(1) Provide documentation that it followed the guidelines provided in the Testing Individuals With Disabilities section of the 1999 edition of the *Standards for Educational and Psychological Testing*;

(2) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance; and

(3)(i) Recommend educational functioning levels based on the information obtained from adult education students who participated in the pilot or field test and who have the disability for which the test has been modified; and

(ii) Provide documentation of the adequacy of the procedures used to translate the performance of adult education students with the disability for whom the test has been modified to an estimate of the examinees' standing with respect to the NRS educational functioning levels.

(Authority: 20 U.S.C. 9212)

§ 462.14 How often and under what circumstances must a test be reviewed by the Secretary?

(a) The Secretary's determination that a test is suitable for use in the NRS is in effect for a period of seven years from the date of the Secretary's written notification to the test publisher, unless otherwise indicated by the Secretary. After that time, if the test publisher wants the test to be used in the NRS, the test must be reviewed again by the Secretary so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(b) If a test that the Secretary has determined is suitable for use in the NRS is substantially revised—for example, by changing its structure, number of items, content specifications, item types, or sub-tests—and the test publisher wants the test to continue to be used in the NRS, the test publisher must submit, as provided in § 462.11(j)(4), the substantially revised test or version of the test to the Secretary for review so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(Authority: 20 U.S.C. 9212)

Subpart C [Reserved]